

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	:	Confirmation No.: 2395
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Chinna N. R. Pellacuru	:	Group Art Unit: 2136
	:	
Serial No.: 09/996,948	:	Examiner: F. A. Yalew
	:	
Filed: November 27, 2001	:	
	:	
For: FACILITATING SECURE	:	
COMMUNICATIONS AMONG MULTICAST	:	
NODES IN A TELECOMMUNICATIONS	:	
NETWORK	:	
	:	

PETITION

**TO CONSIDER PREVIOUSLY FILED INFORMATION DISCLOSURE STATEMENT
THAT THE APPLICANT FILED ON April 25, 2006**

Hon. Commissioner for Patents
Mail Stop ISSUE FEE / PETITION
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

INTRODUCTION

This Petition to Consider Previously Filed Information Disclosure Statement (IDS) is being filed along with the payment of the Issue Fee, and this Petition is directed to the IDS filed by the Applicant on April 25, 2006, but for which a completed copy of the Form 1449 with the Examiner's initials, signature, and date was not subsequently included in the Image File Wrapper for this Application, nor was a copy sent by the Office to the Applicant.

The Applicant respectfully requests via this Petition that a copy of the Form 1449 for this IDS with the Examiner's initials, signature, and date be completed, added to the Image File Wrapper for this Application, and that a copy be sent to the Applicant.

As indicated below, the Office's records indicate that the April 25, 2006 IDS was received and considered, but that the Form 1449 for the April 25, 2006 IDS with the Examiner's initials by the references, and the Examiner's signature and date were

inadvertently omitted from the Image File Wrapper for this Application, and as a result, a copy was also not sent to the Applicant.

DISCUSSION

(1) SEQUENCE OF EVENTS

On April 25, 2006, the Applicant filed an IDS under 37 CFR 1.97(c) with a one-page Form 1449 listing 7 U.S. patent document references, and the Certificate of Mailing on the last page of the IDS indicates that the IDS was deposited with United States Postal Service on April 25, 2006. Please see the attached copy of the IDS and Form 1449 that were filed on April 25, 2006.

Note that all of the cited references are all U.S. Patents or published U.S. Patent Applications, copies of those three cited references are not provided herein, consistent with current Office practice to not provide copies of U.S. Patents, per MPEP §609.04(a)(II). The April 25, 2006 did not include any foreign patent documents or non-patent literature documents.

[The April 25, 2006 IDS was the third IDS filed for this Application. Two other IDS's were filed for this Application, namely the first IDS filed on November 27, 2001 (filed with the original Application filing) and the second IDS filed on January 18, 2006. The initialed, signed, and dated Form 1449 for the first IDS filed on November 27, 2001 was returned with the Office Action mailed on October 5, 2005, and the initialed, but not signed and dated, Form 1449 for the second IDS filed on January 18, 2006 was returned with the Office Action mailed on April 10, 2006. Note also that a second copy of the Form 1449 that was initialed and also both signed and dated by the Examiner was returned with the Notice of Allowance mailed on September 20, 2007.]

The April 25, 2006 IDS was filed with a postcard that identified the Application by serial number and listed the contents of the IDS as follows:

- 1) Information Disclosure Statement (4 pgs)
- 2) PTO 1449 (1 pgs)
- 3) 7 References Cited, 0 enclosed
- 4) Return Acknowledgment Postcard

The Applicant received back from the Office the postcard that was stamped by the OIPE with a date of April 27, 2006, indicating that **this April 25, 2006 IDS was received by the Office on April 27, 2006.** Please see the attached copy of the postcard.

A review of PAIR for this Application shows in the Transaction History that this IDS was received on April 27, 2006.

A review of the Image File Wrapper (IFW) for this Application shows the IDS and Form 1449 dated April 27, 2006. The electronic copy of the April 25, 2006 IDS that is accessed via the IFW shows an OIPE date stamp of April 27, 2006 on the first of the four-page IDS letter and the one-page Form 1449 of the April 25, 2006 IDS.

In the Transaction History, just prior to the mailing of the October 26, 2006 non-final Office Action, there is an entry dated April 27, 2006 that reads "Information Disclosure Statement Considered," which indicates that the April 25, 2006 IDS was in fact considered by the Examiner in preparing the October 26, 2006 non-final Office Action.

However, the Office Action Summary sheet for the October 26, 2006 Office Action does not have the IDS box checked at the bottom to indicate the return of the initialed, signed, and dated Form 1449 for the April 25, 2006 IDS.

In the Applicant's January 27, 2007 response to the October 26, 2006 Office Action, the Applicant at the start of the Remarks pointed out the lack of receipt of the initialed, signed, and dated Form 1449 from the April 25, 2006 IDS, and the Applicant requested that the Examiner return an initialed, signed, and dated Form 1449 with the next communication from the Office.

However, in the next Office Action mailed on June 4, 2007, the Office Action did not include an initialed, signed, and dated Form 1449 for the April 25, 2006 IDS, nor did the Office Action address why that Form 1449 was not being returned,

In the Applicant's September 4, 2007 response to the June 4, 2007 Office Action, the Applicant again requested at the start of the Remarks that a copy of the initialed, signed, and dated Form 1449 for the April 25, 2006 be returned to the Applicant.

However, in the Notice of Allowance (NOA) mailed on September 20, 2007, the initialed, signed, and dated Form 1449 from the April 25, 2006 was still not returned to the

Applicant, nor did the remarks accompanying the NOA explain why the initialed, dated, and signed Form 1449 for the April 25, 2005 IDS was not being returned to the Applicant.

Note that as discussed above, the NOA did include an initialed, signed, and dated copy of the Form 1449 from the second IDS filed on January 18, 2006, because the earlier copy returned to the Applicant had only been initialed, but was neither signed nor dated, by the Examiner.

After receiving the NOA, a staff member for the Applicant's attorney made multiple calls the Examiner to try to obtain the initialed, signed, and dated Form 1449 for the April 25, 2006 IDS, but the staff member was unable to obtain from the Examiner either the initialed, signed, and dated Form 1449 or a response as to why it was not returned to the Applicant.

The Applicant's attorney also called the Examiner to try to obtain the initialed, signed, and dated Form 1449 for the April 25, 2006 IDS, but the Applicant's attorney was also unable to obtain from the Examiner either the initialed, signed, and dated Form 1449 or a response as to why it was not returned to the Applicant.

(2) APPLICANT'S UNDERSTANDING OF THE STATUS OF THE APRIL 25, 2006 IDS

Based on this sequence of events, the Applicant has concluded that (1) the April 25, 2006 IDS was received on April 27, 2006 by the Office as indicated by the stamp on the returned postcard, the entries dated April 27, 2006 in the Transaction History in PAIR, and the inclusion of the IDS with the April 27, 2006 OIPE stamp in the IFW; (2) that the Examiner considered the April 25, 2006 IDS when preparing the Office Action mailed on October 26, 2006, based on the entry dated April 27, 2006 that the IDS was considered that appears immediately below the entries for the Office Action mailed on October 25, 2006; (3) that by an inadvertent oversight, a copy of the initialed, signed, and dated Form 1449 for the April 25, 2006 IDS was not included in the IFW, nor mailed to the Applicant with the October 25, 2006 or any other subsequent communication from the Office; and (4) despite the Applicants repeated written requests (in the OA responses filed on January 27, 2007 and on September 4, 2007) and the Applicant's multiple verbal requests via phone after receipt of the

NOA, the Applicant has been unable to obtain a copy of the initialed, signed, and dated Form 1449 for the April 25, 2006 IDS.

Therefore, the Applicant understands that the April 25, 2006 IDS has been considered, but that through an inadvertent oversight, a copy of the initialed, signed, and dated Form 1449 for the April 25, 2006 IDS was neither included in the IFW nor returned to the Applicant.

(3) RELEVANT RULE AND MPEP GUIDANCE

According to 37 CFR §1.8 “Certificate of Mailing,” “correspondence required to be filed in the U.S. Patent and Trademark Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.”

According to MPEP §503 (“RETURN POSTCARD”): “A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.”

(4) APPLICATION OF THE RELEVANT RULES AND MPEP GUIDANCE

Because the Office returned the postcard for the April 25, 2006 IDS with a stamp by the OIPE showing a date of receipt by the Office of April 27, 2006, the Applicant respectfully submits that the April 27, 2006 IDS was received by the Office. This is confirmed by the entries in the Transaction History in PAIR and the inclusion of the April 25, 2006 IDS documents with the OIPE stamp dated April 27, 2006 in the Image File Wrapper for this Application.

Therefore, based upon MPEP §503, the postcard “serves as *prima facie* evidence of receipt” of the April 25, 2006 IDS, in addition to the inclusion of the April 25, 2006 in PAIR and the IFW.

(5) FILING OF THE APRIL 25, 2006 IDS UNDER 37 CFR 1.97(c)

As noted above, the Applicant filed the April 25, 2006 IDS under 37 CFR 1.97(c), which included a statement pursuant to 37 CFR 1.97(e)(2) that no item contain in the IDS was cited by a foreign patent office or in a counterpart foreign application, and that no information

contained in the IDS was known more than three months prior to the filing of the April 25, 2006 IDS.

Since the status of the Application on April 25, 2006 was that non-final Office Action had just been mailed by the Office on April 10, 2006, the Applicant respectfully submits that the filing of the April 25, 2006 IDS under 37 CFR 1.97(c) is appropriate. Since the Applicant provided the statement under 37 CFR 1.97(e)(2), the Applicant respectfully submits that no fee was due, although the Applicant notes that the Applicant authorized the charging of any fees that may be due to deposit account 50-1302.

CONCLUSION

The Applicant respectfully submits that a proper IDS was filed on April 25, 2006, that the Office has received and entered this IDS into the file for this Application, and that based on the Office's electronic records as reflected in PAIR, the April 25, 2006 IDS was in fact considered by the Examiner, but that through an inadvertent oversight, an initialed, signed, and dated Form 1449 for the April 25, 2006 IDS was omitted from the IFW and also not sent to the Applicant.

Therefore, the Applicant respectfully requests entry of an initialed, signed, and dated Form 1449 for the April 25, 2006 IDS into the file for the present Application effective as of the date the IDS was filed, and that a copy of the Form 1449 for this IDS, with the references thereon each initialed and the Form 1449 dated and signed by the Examiner to indicate that the references have been considered, be returned to the Applicant with the next communication from the Office.

The Office is respectfully requested to contact the undersigned by telephone if it is believed that such contact would further the consideration of the IDS previously filed by the Applicant on April 25, 2006 in the present application.

To the extent necessary to make this reply timely filed, the Applicant petitions for an extension of time under 37 C.F.R. § 1.136.

If any applicable fee is missing or insufficient, throughout the pendency of this application, the Commissioner is hereby authorized to any applicable fees and to credit any overpayments to our Deposit Account No. 50-1302.

Respectfully submitted,

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Craig G. Holmes

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Date: December 19, 2007

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Attachments:

- 1) COPY of Postcard Stamped by OIPE and Dated April 27, 2006 (1 page)
- 2) COPY of IDS Filed on April 25, 2006 (4 pages)
- 3) COPY of Form 1449 Filed with IDS on April 25, 2006(1 page)